

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| FEDERAL TRADE COMMISSION, STATE OF NEW | : | |
| YORK, STATE OF CALIFORNIA, STATE OF | : | 20cv00706 (DLC) |
| OHIO, COMMONWEALTH OF PENNSYLVANIA, | : | |
| STATE OF ILLINOIS, STATE OF NORTH | : | <u>ORDER</u> |
| CAROLINA, and COMMONWEALTH OF | : | |
| VIRGINIA, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| -v- | : | |
| | : | |
| VYERA PHARMACEUTICALS, LLC, AND | : | |
| PHOENIXUS AG, MARTIN SHKRELI, | : | |
| individually, as an owner and former | : | |
| director of Phoenixus AG and a former | : | |
| executive of Vyera Pharmaceuticals, | : | |
| LLC, and KEVIN MULLEADY, individually, | : | |
| as an owner and former director of | : | |
| Phoenixus AG and a former executive of | : | |
| Vyera Pharmaceuticals, LLC, | : | |
| | : | |
| Defendants. | : | |
| ----- | X | |

DENISE COTE, District Judge:

A bench trial in the above captioned action is set for December 14, 2021, in Courtroom 18B, 500 Pearl Street, at 9:30 am. On October 19, an Order was entered denying defendant Martin Shkreli's application to adjourn the trial. On October 20, the parties submitted the direct testimony for trial by affidavit for those witnesses under their control, including Shkreli's affidavit of his direct testimony.

On October 25, Shkreli requested to complete his trial testimony via video while remaining at his Bureau of Prisons

facility in Pennsylvania rather than being writted into the Southern District of New York to be subjected to cross-examination in the courtroom. On October 28, the plaintiffs opposed Shkreli's request. It is hereby

ORDERED that Shkreli's request to complete his trial testimony remotely is denied. Any attempt to accommodate this request will significantly burden the Court, the parties and the Bureau of Prisons. It will interfere with the administration of justice. Shkreli is able to appear in person at the trial and has not shown good cause for declining to do so.

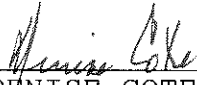
IT IS FURTHER ORDERED that by **Monday, November 1**, the plaintiffs shall file a letter selecting one of the following three options in the event that Shkreli declines to attend the trial in person:

- 1) Striking Shkreli's direct testimony; or
- 2) Conducting the cross-examination and redirect testimony of Shkreli through a de bene esse deposition conducted no later than **December 3**; or
- 3) Accepting Shkreli's direct testimony as given in his affidavit and identifying those portions of his prior deposition testimony that shall constitute his cross-examination testimony at trial. The defendants may thereafter identify those portions of his prior deposition testimony that shall constitute his redirect examination testimony at trial.

IT IS FURTHER ORDERED that Shkreli shall present a writ of habeas corpus by **Wednesday, November 3** for his attendance at the trial or be deemed to have knowingly and voluntarily waived his right to attend trial.

SO ORDERED:

Dated: New York, New York
October 29, 2021



DENISE COTE
United States District Judge